

Federal Housing Finance Board

§ 935.10

(B) Securities which represent a subordinate interest in the cash flows from the underlying mortgage loans;

(C) Securities which represent an interest in any residual payments from the underlying pool of mortgage loans; or

(D) Such other high-risk securities as the Board in its discretion may determine.

(2) *Agency securities.* Securities issued, insured or guaranteed by the United States Government, or any agency thereof, including without limitation mortgage-backed securities, as defined in §935.1 of this part, issued or guaranteed by:

(i) The Federal Home Loan Mortgage Corporation;

(ii) The Federal National Mortgage Association; or

(iii) The Government National Mortgage Association.

(3) *Deposits.* Deposits in a Bank.

(4) *Other collateral.* (i) Except as provided in paragraph (a)(4)(iii) of this section, other real estate-related collateral acceptable to the Bank if:

(A) Such collateral has a readily ascertainable value; and

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(iii) A Bank shall not permit the aggregate amount of outstanding advances to any one member, secured by such other real estate-related collateral, to exceed 30 percent of such member's capital, as calculated according to GAAP, at the time the advance is issued or renewed.

(b) *Bank restrictions on eligible collateral.* A Bank at its discretion may further restrict the types of eligible collateral acceptable to the Bank as security for an advance, based upon the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria.

(c) *Additional collateral.* The provisions of paragraph (a) of this section shall not affect the ability of any Bank to take such steps as it deems necessary to protect its secured position on outstanding advances, including requiring additional collateral, whether or not such additional collateral conforms to the requirements for eligible collateral in paragraph (a) of this section or section 10 of the Act (12 U.S.C. 1430).

(d) *Bank stock as collateral.* (1) Pursuant to section 10(c) of the Act (12 U.S.C. 1430(c)), a Bank shall have a lien upon, and shall hold, the stock of a member in the Bank as further collateral security for all indebtedness of the member to the Bank.

(2) The written security agreement used by the Bank shall provide that the borrowing member's Bank stock is assigned as additional security by the member to the Bank.

(3) The security interest of the Bank in such member's Bank stock shall be entitled to the priority provided for in section 10(f) of the Act (12 U.S.C. 1430(f)).

(e) *Collateral security requiring formal approval.* No home mortgage loan otherwise eligible to be accepted as collateral for an advance by a Bank under this section shall be accepted as collateral for an advance if any director, officer, employee, attorney or agent of the Bank or of the borrowing member is personally liable thereon, unless the board of directors of the Bank has specifically approved such acceptance by formal resolution, and the Board has endorsed such resolution.

§935.10 Banks as secured creditors.

(a) Except as provided in paragraph (b) of this section, notwithstanding any other provision of law, any security interest granted to a Bank by a member, or by an affiliate of such member, shall be entitled to priority over the claims and rights of any party, including any receiver, conservator, trustee or similar party having rights of a lien creditor, to such collateral.

(b) A Bank's security interest as described in paragraph (a) of this section shall not be entitled to priority over the claims and rights of a party that:

§ 935.11

(1) Would be entitled to priority under otherwise applicable law; and

(2) Is an actual bona fide purchaser for value of such collateral or is an actual secured party whose security interest in such collateral is perfected in accordance with applicable state law.

§935.11 Pledged collateral; verification.

(a) *Collateral safekeeping.* (1) A Bank may permit a member that is a depository institution to retain documents evidencing collateral pledged to the Bank, provided that the Bank and such member have executed a written security agreement pursuant to §935.4(c) of this part whereby such collateral is retained solely for the Bank's benefit and subject to the Bank's control and direction.

(2) A Bank shall take any steps necessary to ensure that its security interest in all collateral pledged by non-depository institutions for an advance is as secure as its security interest in collateral pledged by depository institutions.

(3) A Bank may at any time perfect its security interest in collateral securing an advance to a member.

(b) *Collateral verification.* Each Bank shall establish written procedures, with standards similar to those established by the Auditing Standards Board of the American Institute of Certified Public Accountants, for verifying the existence of collateral securing the Bank's advances, and shall regularly verify the existence of the collateral securing its advances in accordance with such procedures.

§935.12 Collateral valuation; appraisals.

(a) Each Bank shall establish written procedures for determining the value of the collateral securing the Bank's advances, and shall determine the value of such collateral in accordance with such procedures.

(b) Each Bank shall apply the valuation procedures consistently and fairly to all borrowing members, and the valuation ascribed to any item of collateral by the Bank shall be conclusive as between the Bank and the member.

(c) A Bank may require a member to obtain an appraisal of any item of col-

12 CFR Ch. IX (1-1-98 Edition)

lateral, and to perform such other investigations of collateral as the Bank deems necessary and proper.

§935.13 Restrictions on advances to members that are not qualified thrift lenders.

(a) *Restrictions on advances to non-QTL members.* (1) Except as provided in paragraphs (a)(4) and (a)(5) of this section, a Bank may make or renew an advance to a non-QTL member only under the following conditions:

(i) The advance is for the purpose of purchasing or funding new or existing residential housing finance assets, as determined pursuant to paragraph (a)(2) of this section;

(ii) The member holds Bank stock at the time it receives the advance in an amount equal to at least five percent of the outstanding principal amount of the member's total advances, divided by such member's ATIP, calculated pursuant to paragraph (a)(3) of this section; and

(iii) Making the advance will not cause the aggregate amount of advances issued by the twelve Banks to non-QTL members to exceed 30 percent of the aggregate amount of the twelve Banks' total outstanding advances.

(2) Prior to approving an application for an advance by a non-QTL member, a Bank shall determine that the principal amount of all advances outstanding to the member at the time the advance is requested does not exceed the total book value of residential housing finance assets held by such member, which shall be determined using the most recent Report of Condition and Income or financial statement made available by the member.

(3)(i) A Bank shall calculate each non-savings association member's ATIP at least annually, between July 1 and October 31, based upon financial data as of June 30 of that calendar year. The Bank may, in its discretion, calculate a member's ATIP more frequently than annually.

(ii) In determining a non-savings association member's annual ATIP, a Bank shall use the financial information from the member's June 30 call report as the primary source of information. A Bank making ATIP determinations other than as part of the annual